Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 71-988

ELBA W. VAUGHN, Widow of Decedent,
Clarence W. Vaughn — Petitioner

versus

WILLIAM JOHN HUFNAGEL, Executor
of the Estate of Clarence W. Vaughn
WILLIAM JOHN HUFNAGEL, and
FLORENCE F. HUFNAGEL, His Wife
DAISY P. BURDON
CHESTER E. VAUGHN — Respondents

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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INDEX

	PAGE
Citations	iii
Counter-Statement of the Case	1–2
Argument	2–3
Conclusion	4

CITATIONS

	PAGE
Kentucky Revised Statute 402.020	2
Meister v. *Moore*, 96 U. S. 76, 24 L. Ed. 826	2
Umbenhower v. *Labus*, 85 Ohio St. 238, 97 N. E. 832	3

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RESPONSE TO PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States of America.

COUNTER-STATEMENT OF THE CASE

Except for self serving and inadmissible declarations by the petitioner, the only proof in this case establishes that the petitioner and the decedent spent one night in an Ohio Motel and returned to Kentucky the next day. The various facets of their cohabitation in

Kentucky as set out in petitioner's brief may be true but are irrelevant.

We must further disagree with the petitioner's statement on page 5 of petitioner's brief which states "The Jefferson County Court held that a common law marriage had been proved in Ohio . . ." The petitioner refers to pages 12 and 13 of her brief. Nothing there or elsewhere establishes such a holding.

ARGUMENT

The petitioner relies on *Meister* v. *Moore,* 96 U. S. 76, 24 L. Ed. 826 and the chain of cases thereafter for comfort. It is true that the Supreme Court has upheld the validity of a common law marriage but only in states where such is not outlawed by State Statute. In the Meister case, *supra,* the Court states:

> "Whatever directions they may give respecting its formation or solemnization, courts have usually held a marriage good at common law to be good notwithstanding the statutes unless they contain express words of nullity."

The Kentucky statute leaves no room for interpretation on this point. Kentucky Revised Statute 402.020 reads, "Marriage is prohibited and void: . . . (4) where not solemnized or contracted in the presence of an authorized person or society."

The petitioner attempts to create a valid common law marriage by combining one night in Ohio with cohabitation thereafter in Kentucky. We accept that the law of Ohio recognizes common law marriages and

that Kentucky should and does give full faith and credit to such an Ohio common law marriage.

However, Ohio does not accept one night in a motel as creating a valid common law marriage. The Kentucky Court of Appeals correctly quoted the Ohio law from *Umbenhower* v. *Labus*, 85 Ohio St. 238, 97 N. E. 832:

> "An agreement of marriage in praesenti, when made by parties competent to contract, accompanied and followed by cohabitation as husband and wife, they being so treated and reputed in the community and circle in which they move, establishes a valid marriage at common law."

When the petitioner and deceased left Ohio they had not qualified a valid common law marriage. Kentucky does not have to accept a status which has failed to blossom into an accepted legal concept in Ohio. There is no public act, record or judicial proceeding in Ohio for which Kentucky could give full faith and credit.

Application of the Fourteenth Amendment calling for equal protection under the law is impossible in this case. The petitioner had as much right as anyone to create a valid common law marriage in Ohio by following the formula set out by the law. No one has been given a right denied to her.

CONCLUSION

No constitutional right of the petitioner has been violated. The petition should be denied.

Respectfully submitted,

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